



PUBLIC NOTICE

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NOTICE OF GRANT OF CONDITIONAL CERTIFICATION FOR SORENSON COMMUNICATIONS, INC., AS REORGANIZED PURSUANT TO CHAPTER 11, TO PROVIDE INTERNET-BASED TELECOMMUNICATIONS RELAY SERVICES PENDING COMMISSION ACTION ON SORENSON'S APPLICATION FOR CERTIFICATION

CG DOCKET NOS. 03-123, 10-51, & 13-24

By the Acting Chief, Consumer and Governmental Affairs Bureau:

By this Public Notice, the Consumer and Governmental Affairs Bureau (Bureau) announces that it grants conditional certification to the entity emerging from the recent bankruptcy proceeding involving Sorenson Communications, Inc. (Sorenson), to continue Sorenson's provision of Internet-based telecommunications relay services (TRS)¹ eligible for compensation from the Interstate Telecommunications Relay Services Fund (TRS Fund),² pending a full determination on Sorenson's application for certification as a provider of Internet-based TRS, as amended to identify its successor (Reorganized Sorenson) as the applicant. We find it to be in the public interest to permit Reorganized Sorenson to provide video relay service (VRS) and Internet Protocol Captioned Telephone Service (IP CTS) pending the consideration of Sorenson's certification application as amended to take into account the new ownership and management structure, because such authorization will avoid interruption of service to the many existing customers of Sorenson's Internet-based TRS and because we find that the reorganization will improve Sorenson's ability, in the near term, to provide TRS in compliance with the Commission's minimum standards.

Sorenson currently provides VRS and IP CTS pursuant to an interim grant of eligibility and has a pending application for certification as a provider of these services.³ As the Commission has ruled:

¹ Internet-based TRS include video relay service (VRS), Internet Protocol Captioned Telephone Service (IP CTS), and Internet Protocol Relay Service (IP Relay). 47 C.F.R. §§ 64.601(a)(15), (16), (17), (40). Effective July 31, 2013, Sorenson ceased providing IP Relay. See Letter from John T. Nakahata, Wiltshire & Grannis LLP, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (July 8, 2013).

² The TRS Fund compensates eligible providers of Internet-based and interstate TRS for their reasonable costs of providing these services. See 47 C.F.R. § 64.604(c)(5)(iii).

³ Sorenson, Internet-Based TRS Certification Application, CG Docket No. 10-51 (filed Dec. 2, 2011) (Certification Application). Under the Commission's rules, providers of Internet-based TRS must be granted certification by the Commission in order to receive compensation from the TRS Fund. 47 C.F.R. § 64.606. When revising its TRS provider certification process, the Commission granted interim eligibility to existing Internet-based TRS providers in order to allow them to continue operating while applying for certification under the revised certification rules. Such interim eligibility remains in effect until the Commission acts on the provider's certification application. See (continued...)

[An Internet-based TRS provider] certification is not transferable. Therefore, in the event that an entity not certified pursuant to section 64.605 [subsequently renumbered 64.606] purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider must be certified under section 64.605 (or otherwise eligible for compensation from the Fund) before it can receive payments from the Fund. On the other hand, if an entity that is certified pursuant to section 64.605 purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider need only notify the Commission of the change in its TRS program and provision of service within 60 days pursuant to section 64.605(f)(2).⁴

The Commission certification process is designed to ensure compliance with the TRS rules, and “[b]ecause the Commission certifies providers based on the attestations of their owners or their representatives, who are ultimately responsible for compliance with the Commission’s rules, the certification of a provider does not automatically transfer to new owners.”⁵

On March 3, 2014, Sorenson and its affiliated entities Allied Communications, Inc., CaptionCall, LLC, SCI Holdings, Inc., Sorenson Communications Holdings, LLC, Sorenson Communications of Canada, ULC, and Sorenson Holdings, Inc. (collectively, the Debtors) filed for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the District of Delaware.⁶ On April 10, 2014, the bankruptcy court issued an order confirming Sorenson’s Chapter 11 reorganization plan.⁷ The confirmation order expressly preserves the Commission’s authority to impose conditions on the resulting transfer of control.⁸

Pursuant to the reorganization plan, Sorenson’s ownership will change substantially. Specifically, Reorganized Sorenson will be under the indirect control of two owners, Franklin Mutual Advisers LLC, and GSO Capital Partners LP (or certain investment funds managed or sub-advised by

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Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10922, ¶ 59 (2011) (*Internet-based TRS Certification Order*).

⁴ *Consumer and Governmental Affairs Bureau Clarifies the Transferability of Telecommunications Relay Service (TRS) Provider Certification*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 10438, 10438 (CGB 2008) (*Certification Transfer PN*). See also *Internet-based TRS Certification Order*, 26 FCC Rcd at 10918, ¶ 47 (confirming the ruling in the *Certification Transfer PN*).

⁵ *Certification Transfer PN* at 10439. See also *Structure and Practices of the Video Relay Services Program: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 10-51, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8689, ¶ 175 (2013) (permanently adopting an attestation requirement for certification applications, and explaining that “[t]he Commission believes that this attestation requirement will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the information provided.”).

⁶ See *In re Sorenson Communications, Inc. et al.*, Case No. 14-10454 (U.S.B.C., D.Del., filed Mar. 3, 2014); see also Letter from Mark D. Davis, Counsel for Sorenson Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (Mar. 5, 2014) (making a substantial change notification).

⁷ *In re Sorenson Communications, Inc. et al.*, Case No. 14-10454, Order Approving the Debtors’ Disclosure Statement for, and Confirming, the Debtors’ Joint Prepackaged Chapter 11 Plan (U.S.B.C., D.Del., Apr. 3, 2014) (*Confirmation Order*).

⁸ *Id.* at 43.

these entities),⁹ neither of which previously held a controlling interest. Thus, the reorganization plan will result in an acquisition of Sorenson by entities that are not themselves already certified Internet-based TRS providers, requiring a new certification under relevant TRS certification precedent.¹⁰

On March 18, 2014, Sorenson filed a request for special temporary authority for Reorganized Sorenson to continue operating pursuant to Sorenson's interim eligibility, notwithstanding the change of control contemplated by the proposed plan of reorganization.¹¹ In the STA Application, Sorenson provides details regarding the restructuring contemplated by the proposed plan of reorganization. Sorenson asserts that such restructuring will improve the Debtors' ability to service their indebtedness and will permit the Debtors to pay down their indebtedness on an extended time frame, as the new first and second lien debt issued under the reorganization plan will mature in 2020 and 2021, respectively.¹² Sorenson adds that the Debtors expect that, as a result of the reorganization plan, Reorganized Sorenson will be able to continue to offer VRS and IP CTS service in compliance with the applicable mandatory minimum standards.¹³ Specifically, Sorenson states that the financial projections submitted by the Debtors to the Bankruptcy Court show that the reorganized Debtors will have sufficient financial capacity to operate during the period of the STA and through the term of a five-year Internet-based TRS authorization.¹⁴ Sorenson also states its understanding that grant of an STA would be subject to the condition that an amended application describing the new ownership structure of Reorganized Sorenson, in substantially similar form to Exhibit C of the STA Application, with any necessary updates, be filed within 15 days after the date the reorganization becomes effective.¹⁵

The Commission's rules provide that providers of Internet-based TRS must be granted certification by the Commission in order to receive compensation from the TRS Fund.¹⁶ As noted above, such certification is not transferable to a non-certified entity that purchases, acquires, or merges with the certified TRS provider.¹⁷ Being granted certification requires the provider, among other things, to establish that its provision of TRS will meet the minimum TRS standards of section 64.604.¹⁸ Until the Bureau completes its review of Sorenson's pending Certification Application and any amendments to reflect the transfer of control of Sorenson, the Bureau is not in a position to make such a finding regarding Sorenson or its successor, Reorganized Sorenson.

⁹ See Sorenson Communications, Inc., Application for Special Temporary Authority, CG Docket No. 10-51, at 5-6 (Mar. 18, 2014) (STA Application). These entities control Reorganized Sorenson's ultimate parent, which will own Reorganized Sorenson through a series of 100% owned subsidiaries. *Id.*, Exhs. A, C at 22.

¹⁰ See note 4, *supra*.

¹¹ STA Application.

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *Id.* at 1-2.

¹⁶ 47 C.F.R. § 64.606.

¹⁷ *Certification Transfer PN*, 23 FCC Rcd at 10438; *Internet-based TRS Certification Order*, 26 FCC Rcd at 10918, ¶ 47.

¹⁸ 47 C.F.R. §§ 64.606(b)(2)(i).

Although the Commission's TRS rules do not address the granting of special temporary authority when there has been a transfer of control of a certified provider, they do provide for the granting of conditional certification, in order to avoid interruption of service, where the Commission has not yet verified information contained in a certification application.¹⁹ Such conditional certifications are granted without prejudice to the Commission's final determination of the applicant's qualifications and thus preserve the Commission's ability to fully review each application for certification on the merits.²⁰

As the reorganization of Sorenson is not yet effective, Reorganized Sorenson does not at this time have an application for certification on file; however, the STA Application includes as an exhibit a draft amended application, which substitutes Reorganized Sorenson as the applicant, provides information about the restructured applicant, and states that Reorganized Sorenson will comply with each of the minimum TRS standards.²¹ Based on this exhibit, Sorenson's representations in the STA Application, and the *Confirmation Order*, the Bureau is able to conclude that authorizing Reorganized Sorenson to continue operating as Sorenson's successor, pending a final certification decision, will serve the objectives of section 225 and the Commission's TRS rules by preventing Sorenson's bankruptcy and reorganization from interrupting service to the many existing customers of Sorenson's Internet-based TRS. In addition, we find that Reorganized Sorenson will be in a better financial position than the pre-reorganization Sorenson, at least in the near term, to provide TRS in compliance with the Commission's minimum standards. The submitted documentation indicates that the restructuring of Sorenson's debt will improve the Debtors' ability to service their indebtedness and will permit the Debtors to pay down their indebtedness on an extended time frame, as the new first and second lien debt issued under the reorganization plan will not mature until 2020 and 2021, respectively.²² This restructuring, therefore, appears to make it more likely that Reorganized Sorenson can provide TRS in compliance with the Commission's minimum standards pending a final determination on the Certification Application.

For these reasons, the Bureau finds that it is in the public interest to grant Reorganized Sorenson, as that entity is described in the STA Application, conditional certification to provide VRS and IP CTS, pending completion of the Commission's review of an amended Certification Application. Such conditional certification will allow the Commission to examine fully whether the applicant does and will meet or exceed the minimum TRS standards. We grant conditional certification subject to the condition that Reorganized Sorenson shall file an amended application describing the new ownership, new management, and other material changes in Reorganized Sorenson, in substantially similar form to Exhibit C of the STA Application, as well as any other amendments necessary to update the application, within 15 days after the date the reorganization becomes effective.²³ We also require Reorganized Sorenson to submit further amendments to update the application if and when additional changes occur prior to a full determination on the application. This grant of conditional certification is without prejudice

¹⁹ *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, ¶ 37. The ability to issue conditional grants of certification "balances the need for continuity of service with the need to ensure that only qualified applicants for [Internet-based TRS] service are eligible to receive compensation from the TRS Fund for their provision of [Internet-based TRS] services." *Id.* at 10915, ¶ 37.

²⁰ *Id.*

²¹ STA Application, Exh. C. The Bureau grants to Reorganized Sorenson a temporary limited waiver of the application filing requirements of section 64.606, pending the submission of an amended certification application, in order to allow Reorganized Sorenson to be the certified provider immediately upon the reorganization becoming effective. This waiver will terminate 15 days after the date the reorganization becomes effective.

²² *Id.* at 4-5.

²³ *See id.* at 1-2.

to the Commission's final determination of Reorganized Sorenson's qualifications and is dependent on the Commission verifying the information provided in the Certification Application, as amended, including but not limited to conducting one or more site visits.²⁴

Redacted copies of the Sorenson's STA Application and supplemental filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Suite CY-A257, Washington, DC 20554, (202) 418-0270. The full text of this *Public Notice* is similarly available for public inspection or copying. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its web site: www.bcpweb.com, or by calling 1-800-378-3160. Redacted copies of Sorenson's STA Application and supplemental filings may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 10-51 into the Proceeding block).

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For further information, please contact Robert Aldrich, Consumer and Governmental Affairs Bureau, at (202) 418-0996, or e-mail at Robert.Aldrich@fcc.gov.

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²⁴ See *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, ¶ 37.